

1 ROBERT J. KOCHLY  
2 District Attorney  
3 Contra Costa County  
4 Holly Harpham  
5 State Bar No. 240482  
6 10 Douglas Drive., Suite 130  
7 Martinez, CA 94553  
8 (925) 646-2526

9  
10  
11  
12  
13 SUPERIOR COURT, STATE OF CALIFORNIA  
14 CONTRA COSTA COUNTY  
15

16 THE PEOPLE OF THE STATE OF CALIFORNIA,

17 Plaintiff,

18 vs.

19 ABHINAV BHATNAGAR,

20 Defendant.

Case No. 1-127484-4

MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
OPPOSITION TO DEFENDANT'S  
MOTION TO SUPPRESS  
EVIDENCE (Penal Code §1538.5)

Date: October 16<sup>th</sup>

Time: 1:30

Dept.: 29

21 STATEMENT OF FACTS

22 On May 20<sup>th</sup> 2006 at approximately 1:08 a.m Officer Ingrassia of the San Ramon  
23 Police Department was on routine patrol in a marked police car. On this date and time Officer  
24 Ingrassia was located westbound on Bollinger Canyon Road at the intersection with Bishop  
25 Ranch 1 East. While at this location the officer observed a silver Nissan Sentra make a "U-turn"  
26 from westbound Bollinger Canyon Road to eastbound Bollinger Canyon Road at the intersection  
27 with Bishop Ranch 1 East. This U-Turn was in violation of the posted "No U-Turn" sign  
28 located at the intersection. The officer then followed the Nissan, later identified as the

1 defendant's vehicle, through the same intersection. The vehicle then made a right turn into the  
2 number one lane of southbound Market Place. As the officer followed the vehicle it made an  
3 abrupt right turn from the left lane, across the right lane of Market Place, into the Valero Gas  
4 Station at 1081 Market Place. As the Nissan made this turning movement it failed to use any  
5 turn signal and the officer was forced to break and slow down to avoid a possible collision. The  
6 officer made contact with the defendant, who identified himself with an expired driver's license.  
7 During this conversation the officer noticed objective signs of intoxication, including the odor of  
8 alcohol, bloodshot and droopy eyes and slightly slurred speech. The defendant failed to  
9 complete a field sobriety test as explained and was placed under arrest for a violation of Penal  
10 Code §23152 (a).

#### 11 12 DEFENDANT'S MOTION

13 The defendant has now moved this Court, pursuant to Penal Code section 1538.5, to  
14 suppress all tangible and/or intangible evidence obtained as a result of an illegal act. In support  
15 of his motion, the defendant argues that the evidence was the fruit of an illegal arrest, search and  
16 seizure, in violation of the Constitutions of the United States and the State of California.

#### 17 18 STANDARD OF REVIEW

19 A court may deny a motion to suppress evidence pursuant to Penal Code Section  
20 1538.5 when the court believes that the factual testimony on behalf of the People is more  
21 probably true than false. In other words, the standard of proof that the People must meet to  
22 justify warrantless police action is proof by a preponderance of the evidence that the police  
23 conduct was lawful. (*United States v. Matlock* (1974) 415 U.S. 164, 177, fn. 14; *People v. James*  
24 (1977) 19 Cal. 3d 99, 106 Cal.3d 99, 106, fn. 4; *People v. Superior Court (Bowman)* (1971) 18  
25 Cal.App.3d 316)

## POINTS AND AUTHORITIES

### **I. The Stop of the Defendant's Vehicle is Constitutionally Permissible Because the Defendant Had Violated the California Vehicle Code.**

An officer with reasonable suspicion that a motorist has violated the California Vehicle Code may stop the vehicle involved for investigation. (*People v. Castellon* (1999) 76 Cal.App.4th 1369, 1373 [expired registration]; *Kodani v. Snyder* (1999) 75 Cal.App.4th 471, 476-477 [no seat belt]; *People v. Bell* (1996) 43 Cal.App.4th 754, 760-761; *People v. Uribe* (1993) 12 Cal.App.4th 1432, 1436 [unsafe lane change]; *Byrd v. Superior Court* (1968) 268 Cal.App.2d 495, 496; *People v. Bracken* (2000) 83 Cal.App.4th Supp. 1 [weaving within lane].)

While the temporary detention of a driver to investigate a suspected Vehicle Code violation "will not ordinarily be deemed an arrest," (*People v. Superior Court (Simon)* (1972) 7 Cal.3d 186, 200) a traffic violation constitutes a "public offense" for which a warrantless arrest may be made without violating the Fourth Amendment. (*Atwater v. City of Lago Vista* (2001) 532 U.S. 318; *People v. McKay* (2002) 27 Cal.4th 601.)

Here, Officer Ingrassia had reasonable suspicion to believe the defendant had violated two California Vehicle Codes when he observed the defendant make a 'U-Turn' in violation of a posted 'No U-Turn' sign, a violation of CVC §22101 (d) and was forced to use evasive measures when the defendant made an abrupt turn without benefit of a turn signal in violation of CVC §22107.

### **II. The Arrest Was Supported By Probable Cause Because the Officer Observed Objective Signs of Intoxication After The Defendant's Vehicle Was Stopped.**

A warrantless custodial arrest is reasonable under the Fourth Amendment whenever a police officer has probable cause to believe the person arrested has committed a criminal offense. (Pen. Code, § 836(a)(1) & (2); *People v. Moore* (1975) 51 Cal.App.3d 610, 616; *People v. Braun* (1973) 29 Cal.App.3d 949, 966-967.) The probable cause standard applies to all offenses, from felonies to very minor criminal offenses punishable only by a fine. (*Atwater v. City of Lago Vista* (2001) 532 U.S. 318, 323, 340, 353; *People v. McKay* (2002) 27 Cal.4th 601, 605, 618.)

Cause to arrest exists when the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information would lead an officer of ordinary care

1 and prudence to entertain an honest and strong suspicion that the person arrested is guilty of a  
2 crime. (*Beck v. Ohio* (1964) 379 U.S. 89, 91; *People v. Price* (1991) 1 Cal.4th 324, 410; *People*  
3 *v. Harris* (1975) 15 Cal.3d 384, 389.)

4 Probable cause is a practical, nontechnical concept to be determined upon the facts and  
5 circumstances of each case. (*People v. Braun, supra.*) It requires only the probability of  
6 criminal activity, not a prima facie showing. (*People v. Rodriguez* (1997) 53 Cal.App.4th 1250,  
7 1262; *People v. Lewis* (1980) 109 Cal.App.3d 599, 608.) Probable cause is "having more  
8 evidence for than against . . . evidence which inclines the mind to believe, but leaves some room  
9 for doubt." (*People v. Ingle* (1960) 53 Cal.2d 407, 412-413.)

10 [P]robable cause requires only a probability or substantial chance of criminal  
11 activity, not an actual showing of such activity. By hypothesis, therefore,  
12 innocent behavior frequently will provide the basis for a showing of probable  
13 cause; to require otherwise would be to sub silentio impose a drastically more  
14 rigorous definition of probable cause than the security of our citizens' demands. . .

15 In making a determination of probable cause the relevant inquiry is not whether  
16 particular conduct is "innocent" or "guilty," but the degree of suspicion that  
17 attaches to particular types of noncriminal conduct.

18 (*Illinois v. Gates* (1983) 462 U.S. 213, 243, fn. 13; *People v. Brown* (1990) 216 Cal.App.3d  
19 1442, 1449-1450.)

20 The evidence supporting probable cause need not be admissible at trial on the issue of  
21 guilt. (*People v. Ingle, supra*, 53 Cal.2d at pp. 412-413.). Here, the officer had probable cause  
22 to arrest the defendant because of the objective signs of intoxication which he exhibited,  
23 including red and watery eyes, slurred speech and the odor of alcohol.

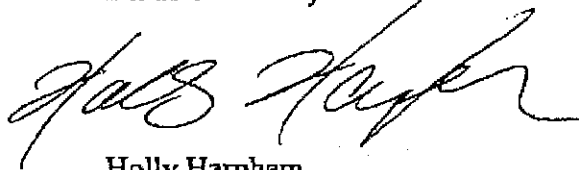
#### 24 25 26 CONCLUSION

27 For the foregoing reasons, the defendant's motion and the arguments upon which it is  
28 based are without merit. The People respectfully request that the defendant's motion be  
denied.

1  
2 DATED: 10/9/06  
3

Respectfully submitted,

4 ROBERT J. KOCHLY  
5 District Attorney

6  
7 

8 Holly Harpham  
9 Deputy District Attorney  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE BY FACSIMILE TRANSMISSION  
(C.C.P. 1012, 1013a, 1963(24), 2015.5)

No. 1-127484-4

Re: PEOPLE v. ABHINAV BHATNAGAR

I certify that my address is the District Attorney's Office of Contra Costa County, 10 Douglas Drive, Suite 130, Martinez, California, 94553, and I am a citizen of the United States, over 18 years of age, a resident of the County of Contra Costa, and not a party to the within action;

I served a true copy of the attached

MEMORANDUM OF POINTS & AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

by placing said copy in the Telephone Facsimile Machine and transmitting as follows:

Public Defender's Office  
Facsimile (FAX) Telephone Number: (925) 335-8010

The instrument of transmittal is a telephone facsimile machine which is located in a place having proper telephone hookup and transmission capabilities and is served by telephone number (925) 646-2524, located at 10 Douglas Drive, Suite 130, Martinez, California, Contra Costa County.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: October 10, 2006  
at Martinez, California.

B. Welch

bw/Clerk